

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

TRANSAERO, INC.,

Plaintiff,

-against-

GRAHAM CHAPPELL and INTERNATIONAL  
AVIATION SERVICES PTY, LTD.,

Defendants.

JOSEPH F. BIANCO, District Judge:

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ **AUG 15 2016** ★  
LONG ISLAND OFFICE

ORDER  
13-CV-5752 (JFB)(AYS)

Before the Court is a Report and Recommendation ("R&R") from Magistrate Judge Shields, advising the Court regarding the award of attorney's fees. The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (See R&R, dated May 11, 2016, at 4.) On July 15, 2016, plaintiff's counsel filed an Affirmation of Service, declaring that he had served the R&R on defendants by overnight and first class mail on that same date. The date for filing any objections has since expired, and no objections have been filed. For the reasons set forth below, the Court adopts the well-reasoned R&R.

Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); see also *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); cf. 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure

to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we ‘may excuse the default in the interests of justice.’” (quoting *Thomas*, 474 U.S. at 155)).

Although the parties have waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution and HEREBY ADOPTS the well-reasoned R&R. IT IS HEREBY ORDERED that plaintiff’s motion seeking attorney’s fees (ECF No. 64) is denied. The Court will issue default judgment accordingly.

SO ORDERED

JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

Dated: August 15, 2016  
Central Islip, New York